

HOUSE No. 737

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty for legislation to make certain changes relative to the uniform durable power of attorney law. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE UNIFORM DURABLE POWER OF ATTORNEY ACT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 201B of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 striking out subsection A and inserting in place thereof the
4 following subsection:—

5 (a) A durable power of attorney is a power of attorney by which
6 a principal, in writing, designates another as his attorney in fact
7 and the writing contains the words, “This power of attorney shall
8 not be affected by subsequent disability or incapacity of the prin-
9 cipal,” or “This power of attorney shall not be affected by subse-
10 quent disability or incapacity of the principal or by lapse of time,”
11 or “This power of attorney shall become effective upon the dis-
12 ability or incapacity of the principal,” or similar words showing
13 the intent of the principal that the authority conferred shall con-
14 tinue notwithstanding the subsequent disability or incapacity of
15 the principal, and, unless the instrument states a time of termina-
16 tion, shall continue notwithstanding the lapse of time since the
17 execution of the instrument.

1 SECTION 2. Said Chapter 201B is hereby further amended by
2 striking out Section 2, as appearing in the 2000 Official Edition
3 and inserting in place thereof the following section:—

4 Section 2. Regardless of the date of execution of the durable
5 power of attorney, all acts done by an attorney in fact pursuant to

6 a durable power of attorney during any period of disability or
7 incapacity of the principal shall have the same effect and inure to
8 the benefit of, and bind the principal and his successors in
9 interest, as if the principal were competent and not disabled.

1 SECTION 3. Said Chapter 201B is hereby further amended by
2 striking out section 5, as appearing in the 2000 Official Edition
3 and inserting in place there of the following section:—

4 Section 5. Good faith reliance; knowledge of termination of
5 power; damages and costs

6 As to acts undertaken in good faith reliance thereon, an affi-
7 davit executed by the attorney in fact under a power of attorney,
8 durable or otherwise, stating that he did not have, at the time of
9 exercise of the power, actual knowledge of the termination of the
10 power by revocation or of the death, disability or incapacity of the
11 principal shall be conclusive proof of the nonrevocation or nonter-
12 mination of the power at that time. If the exercise of the power of
13 attorney requires execution and delivery of any instrument that is
14 recordable, such affidavit when authenticated for record shall be
15 likewise recordable. This section shall not affect any provision in
16 a power of attorney for its termination by expiration of time or
17 occurrence of an event other than express revocation or a change
18 in the capacity of the principal. Third parties who act in reason-
19 able reliance on such an affidavit shall not be liable in any action
20 for any loss suffered or liability incurred as a result of actions
21 taken by an attorney in fact.

22 An attorney in fact who prevails in enforcing a durable power
23 of attorney shall be entitled to recover attorney's fees, costs, and
24 consequential damages, and such other equitable relief as the
25 court deems appropriate.